

OGC 73-0483

21 March 1973

MEMORANDUM FOR: SA/Information Control

SUBJECT : Official Use Only v. Privileged Information

1. This is in response to your memorandum of 8 March, subject as above, and our several subsequent telephone conversations.

2. The question posed by your memorandum is whether the substitution of the term "Privileged Information -- Not To Be Released -- Exempt From Freedom of Information Act" for the term "Official Use Only", as documents markings, would provide sufficient protection against release of documents. The information involved is information derived from overt sources which want to be treated as confidential sources for business reasons, or is derived under circumstances involving copyright protection.

3. The Freedom of Information Act authorizes the Agency to decline to release documents or information which involves "trade secrets and commercial or financial information obtained from a person and privileged or confidential". The quoted language, together with a Department of Justice background memorandum issued at the time the statute was enacted, are clear that information of the first category above, that is, that obtained from overt sources which want to be treated as confidential, may be withheld from the public. The proposed marking therefore, together with appropriate regulatory language concerning the handling and treatment of documents so marked, would seem to furnish adequate protection for that category of information.

4. Information is not exempt from disclosure under the Freedom of Information Act merely because of copyright features. Therefore, unless copyrighted information falls under an exemption under the Freedom of Information Act, such as the one quoted above, the proposed marking would not be appropriate for documents which concern such information. However,

OGC Has Reviewed

the stamp could be modified by deleting the last portion ("Exempt From Freedom of Information Act"). The documents then would at least receive the protection of the requirement that they are "Not To Be Released".



STATINTL

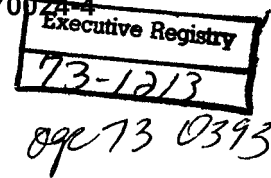
Associate General Counsel

OGC:RHL:sin

Original - Addressee

- 1 - Security-E.O. 11652-Classification & Declassification subj w/att OGC 73-
- 1 - RHL signer
- 1 - Chrono

0393



8 March 1973

STATINTL

MEMORANDUM FOR: Associate General Counsel

SUBJECT: Official Use Only vs Privileged Information



This is the subject I discussed with you on the telephone 8 March 1973. A considerable amount of CRS information is derived from overt sources which either want to be treated as confidential sources for business reasons, or is derived without right to copyright protection.

Up to now, CRS has been identifying and protecting such information by use of the "official use only" legend. This may be sufficient. On the other hand, it may be that this information is one of the exemption categories under the Freedom of Information Act and can be properly protected by a "privileged information" caveat. What do you think?



STATINTL

Special Assistant for Information Control

Attachment

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Next 2 Page(s) In Document Exempt

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

OFFICIAL USE ONLY vs PRIVILEGED INFORMATION

FROM:

C/ISG/CRS

EXTENSION

NO.

DATE

8 March 1973

TO: (Officer designation, room number, and building)

STATINTL

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

2.

3.

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STATINTL

I have told my people to use "PRIVILEGED INFORMATION on anything we previously would have used "OFFICIAL USE ONLY."

The only problem is - the new category does not cover copy-right, slander, etc. the way the OOU did.

Am I okay in what I am doing with the Privileged Information category?

STATINTL